



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0950]

RIN 1625-AA11

Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

---

SUMMARY: The Coast Guard is temporarily establishing a regulated navigation area (RNA) comprising all waters between the New York City Department of Sanitation Marine Transfer Stations (MTSS) on Gowanus Bay and Flushing Bay. While the temporary interim rule is in effect, the Coast Guard may restrict or prohibit vessel traffic within the RNA to accommodate the load-out and transit of four gantry cranes that will pose an imminent hazard to vessels operating in the area.

DATES: This rule is effective with actual notice for purposes of enforcement from November 1, 2012 through November 30, 2012, and effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2012. Comments and related material must be received by the

Coast Guard on or before November 30, 2012. Requests for public meetings must be received by the Coast Guard on or before November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2012-0950. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division at Coast Guard Sector New York, telephone (718) 354-4195, email [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Lieutenant Isaac Slavitt, First Coast Guard District Waterways Management Division, Boston, MA, telephone (617) 223-8385, email [Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

APA	Administrative Procedure Act
DHS	Department of Homeland Security
FR	Federal Register
MTS	New York City Department of Sanitation Marine Transfer Station
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal information you have provided.

#### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you

submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

## 4. Public meeting

We do not now plan to hold a public meeting. But you may

submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553(b) provides that a general notice of proposed rulemaking (NPRM) must be published "unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." This rule identifies the persons who will be subject to the RNA regulations: mariners in or seeking to enter a defined area of the Port of New York and New Jersey between November 1, 2012, and November 30, 2012. Each of these persons will be given actual notice of any restrictions or prohibitions imposed on them by this rule. Section 553(b)(B) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed

rulemaking with respect to this rule because the Coast Guard received the specific request to establish a no-wake zone around the load out and transits from the contractor on September 6, 2012. There was insufficient time and therefore it was impracticable to issue an NPRM and conduct a prior notice and comment period. This rule is necessary to protect the safety of both the gantry crane load out and transit crews and the waterway users operating in the vicinity of the RNA. The proposed movement of the gantry cranes creates a significant hazard for waterway users and crane workers. Any delay or cancellation of the ongoing New York City Department of Sanitation MTS facility upgrades would be contrary to the public interest as it would delay necessary operations and increase costs to the public. Additionally, the dynamic nature of the gantry crane loading and transit operations necessitate that all mariners navigate at a safe speed within the RNA, as the barge and gantry crane and construction equipment at the two MTS facilities will change on a daily basis. In order to address any further public concerns, this rule is available for public comment until November 30, 2012.

### C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel

traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The offloading and transit of gantry cranes involves large machinery and construction vessel operations above and in the navigable waters of the Port of New York and New Jersey. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crews. In order to mitigate the inherent risks involved in these operations, it is necessary to control vessel movement through the area.

The purpose of this rule is to ensure the safety of waterway users, the public, and construction workers for the duration of the gantry crane load-outs and transits during the effective period. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit at No-wake speed.

#### D. Discussion of the Interim Rule

The New York City Department of Sanitation is upgrading Marine Transfer Stations throughout the City to containerized operations. This upgrade requires installation of gantry cranes at the Gowanus Bay and Flushing Bay MTS facilities. Four gantry cranes will be delivered to the Red Hook Container Terminal in Brooklyn, NY on Buttermilk Channel. Two of these gantry cranes



will be delivered by the Chesapeake 1000 to the Gowanus Bay MTS on Gowanus Bay, approximately 3.0 nautical miles to the southeast. The other two gantry cranes will be offloaded onto barges for transit and offloading to the Flushing Bay MTS on Flushing Bay, approximately 13.0 nautical miles to the northeast.

The load out and transit of these gantry cranes involves large machinery and construction vessel operations above and upon the navigable waters between Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial vessel traffic and the barge and load out crews. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

This action is intended to restrict vessel traffic on a portion of the waterways between Gowanus Bay and Flushing Bay in the Port of New York and New Jersey while gantry cranes are loaded onto barges at Red Hook Container Terminal on Buttermilk Channel and transit to the MTS facilities on Gowanus and Flushing Bays.

These operations are tentatively scheduled to take place starting on November 1, 2012 and lasting several days, but this rule will be made effective through November 30, 2012 to account for any unforeseen delays. Vessels will be required to transit at No Wake speed when meeting or overtaking the vessels carrying these gantry cranes.

The Coast Guard will notify mariners of planned waterway transit restrictions via Marine Information Broadcasts, Coast Guard Advisory Notices, and at <http://homeport.uscg.mil/newyork>.

The Sector New York Captain of the Port will cause notice of enforcement or suspension of enforcement, of this RNA to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Marine Information Broadcasts, Coast Guard Advisory Notices, and at <http://homeport.uscg.mil/newyork>.

#### E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay during the effective period.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only require vessels to transit at No-wake speed when meeting or over-taking the Chesapeake 1000 crane barge or other barges used to carry the gantry cranes from the Red Hook Container Terminal to the MTSS on Gowanus and Flushing Bays. The RNA will only be in effect for approximately three hours for

operations between Red Hook Container Terminal and Gowanus Bay and for approximately seven hours between Red Hook Container Terminal and Flushing Bay. Although the RNA would apply to the entire width of the waterways, traffic would be allowed to pass through the RNA at No Wake speed. Before the activation of the zone, we will issue maritime advisories widely available to users of the port.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or

complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area which requires vessels to transit at No Wake speed. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist

supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.104-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0950 to read as follows:

§165.T01-0950 Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY.

(a) Regulated area. The following area is a regulated navigation area: All navigable waters of the East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels, between the New York City Department of Sanitation Marine



Transfer Station (MTS) at 40°40'09.48"N, 073°59'55.75"W (about 260 yards south of the Hamilton Avenue Bridge) on Gowanus Bay and the MTS at 40°46'11.00"N, 073°50'58.75"W (about 270 yards south of the Cape Ruth) on Flushing Bay.

(b) Effective dates and enforcement periods. This rule is effective and enforceable with actual notice from November 1, 2012 through November 30, 2012.

(c) Definitions. The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.11, 33 CFR 165.13, as well as the following regulations, apply.

(2) During periods of enforcement, all vessels must

transit at a No-wake speed to minimize surge when transiting past the Weeks Marine and Witte Barges carrying the gantry cranes.

(3) During periods of enforcement, all persons and vessels given permission to enter or operate in the regulated area must comply with the instructions of the COTP or the designated representative. Upon being hailed by an official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area must contact the COTP or the designated representative via VHF channel 16 or 718-354-4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

Dated: October 26, 2012

J. B. McPherson  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

[FR Doc. 2012-27490 Filed 11/09/2012 at 8:45 am; Publication Date: 11/13/2012]